



28 FEB 2003

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In re Application of
ALTHOEFER, Henning *et al*
Application No.: 10/049,265
PCT No.: PCT/EP00/07370
Int. Filing Date: 31 July 2000
Priority Date: 09 August 1999
Attorney's Docket No.: 50572
For: MONOCELLULAR OR
MULTICELLULAR ORGANISMS FOR
PRODUCING RIBOFLAVIN

DECISION

The decision is in response to applicants' "Reply to Notification of Defective Response" filed on 24 July 2002. No fee is required.

BACKGROUND

On 11 February 2002, applicants filed a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371 which was accompanied by, *inter alia*, a purported English translation of the international application.

On 11 April 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (PCT/DO/EO/905) indicating that the translation was defective and a new translation and a \$130.00 processing fee were required. Applicants were given two months to respond with extensions of time available pursuant to 37 CFR 1.136(a).

On 02 May 2002, applicants filed several documents including a "Response to Notification of Missing Requirements Under 35 USC § 371."

On 26 June 2002, the DO/EO/US mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the translation of the international application was defective because the number of claims in the international application and the number of claims in the translation were not the same. This action required a response within one-month from the date of mailing thereof, or within the time remaining for response set forth in the Form PCT/DO/EO/905. No further extensions of time were available.

On 24 July 2002, applicants submitted the instant reply.

On 26 February 2003, applicants filed via facsimile, a copy of part of the response purportedly filed 02 May 2002 along with a copy of the postcard receipt for those documents.

DISCUSSION

Response Dated 02 May 2002

The "Response to Notification of Missing Requirements Under 35 USC § 371" purportedly filed 02 May 2002 was not located in the file. Nevertheless, applicants submitted via facsimile a copy of part of that response along with a date-stamped postcard receipt per the request of James Thomson, PCT Legal.

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See MPEP § 503

Applicants have provided a copy of the date-stamped filing receipt for documents submitted 02 May 2002. The filing receipt records that a "Response to Notification of Missing Requirements Under 35 USC § 371" were among the documents received in the USPTO. The filing receipt is stamped "02 MAY 2002" across its face. The name of the applicants, and serial number are listed on the postcard receipt.

Accordingly, applicants have provided *prima facie* evidence that the "Response to Notification of Missing Requirements Under 35 USC § 371" was received by the USPTO on 02 May 2002.

Defective English Translation

Applicants submitted an English translation of the international application PCT/EP00/07370 upon entering the national stage on 11 February 2002. The English translation contained 20 claims. However, a review of the international application reveals that it was **originally** submitted with 21 claims. The number of claims were subsequently amended to 20 claims.

On 11 April 2002, the DO/EO/US mailed Form PCT/DO/EO/905 indicating that the translation of the international application was defective because (1) the text in the drawings has not been properly translated, and (2) the number of claims in the international application and the number of claims in the translation were not the same.

In the 02 May 2002 response, applicants assert that they "did not find any text in the drawings which has not been properly translated" and also claim that "applicants inspected the **amended** international application and the translation. Both have 20

claims. The originally filed international application had 21 claims. The international application was amended at a later stage to contain 20 claims."

The DO/EO/US mailed a Form PCT/DO/EO/916 on 26 June 2002 indicating that the translation of the international application was still defective because the number of claims in the international application and the number of claims in the translation were not the same.

In the instant response dated 24 July 2002, applicants reiterate that "both the **amended** international application and the translation have 20 claims. The originally filed international application had 21 claims. The international application was amended at a later stage to contain 20 claims."

35 U.S.C. 371 (c)(2) requires applicants to file a copy of the international application, and a translation into the English language of the international application, if it was filed in another language. In addition, 37 CFR 1.495(c)(1) requires a translation of the international application, **as filed**, into the English language, if it was originally filed in another language.

Accordingly, the translation submitted with the national stage papers on 11 February 2002 was defective because it was not a translation of the international application as **originally filed**. The translation did not include the same number of claims as the original. A translation of the international application as originally filed has not yet been submitted. This was a translation of the amended international application which does not meet the requirements of the rules.

Moreover, 37 CFR 1.495(h) states that if "any required translation of the international application as filed and/or the oath or declaration are not timely filed, an international application will become abandoned as to the United States upon expiration of the time period set pursuant to paragraph (c) of this section."

CONCLUSION

Since the time to respond to the PCT/DO/EO/905 mailed 11 April 2002 has expired, the above-captioned application is hereby **ABANDONED**.

Applicants may wish to consider filing a petition under 37 CFR 1.137(a) or (b) requesting that the application be revived. An acceptable English language translation of the international application as originally filed and the appropriate petition fee will be required with the petition to revive.

Any such petition to revive or request for reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any

reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." No petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.


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